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November 22, 2005

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: June 15, 2005

Case Number: TSO-0252

This Decision concerns the eligibility of XXXXX XXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on May 17, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, k, j and l.

More specifically, the Notification Letter alleges that the individual has: 1) “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire . . . on a matter regarding eligibility for DOE access authorization,” 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” 3) “has used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances,” and 4) “[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(f), (k), (j) and (l) (Criterion F, Criterion J, Criterion K and Criterion L, respectively). In reference to Criterion J, the Notification Letter states that the individual has been diagnosed by a DOE consultant-psychiatrist (DOE Psychiatrist) as suffering from alcohol abuse. With regard to Criterion L, the Notification Letter indicates that the individual has had three alcohol arrests, for underage drinking in 1988 and 1989, and on a charge of DUI in April 2004.<sup>2/</sup> The Notification Letter further notes that the April 2004 DUI followed a period when the individual had temporarily stopped drinking due to problems with alcohol. Next, the security concern under Criterion K stems from a statement reportedly made by the individual to the DOE Psychiatrist that the individual used marijuana on one occasion. This revelation by the individual also raised a concern under Criterion F, since the individual had previously indicated on security questionnaires that he never used an illegal drug.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 15, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 21, 2005, I was appointed as Hearing Officer.

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<sup>2/</sup> The Notification Letter omitted another, more recent arrest in February 2005, when the individual was again charged with DUI. However, the police report of that arrest was included in the exhibits provided to the individual by DOE Security. Thus, the individual was given notice that the February 2005 DUI would be considered in the present proceeding in reference to Criterion J.

After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called a Personnel Security Specialist as its sole witness. The individual testified on his own behalf and called no other witnesses. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh.".

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a DOE security clearance in 1989 as a condition of his employment with a DOE contractor. Prior to gaining employment, the individual had two alcohol-related arrests, in 1988 and 1989, on charges of Illegal Consumption for underage drinking as a teenager. During the ensuing years, there were periods when the individual admittedly drank excessively, but he was able to return to moderate drinking. However, in 2003, the individual's alcohol consumption increased to the degree that it began to cause problems in his personal life. The individual was having difficulty controlling the amount of his drinking, he began neglecting some of his household responsibilities, and he had arguments with his wife about his drinking. The individual therefore made the decision in late 2003 to stop drinking.

Within a few months, the individual decided to start having a beer on occasion, but he continued to refrain from drinking whiskey, which had caused him problems in the past. However, on April 13, 2004, the individual was at home working on his taxes when he inadvertently discovered a bottle of whiskey. The individual found that he needed to go out to pick up some additional paperwork to complete his taxes and decided to mix some of the whiskey with coke in a one liter bottle to take with him. The individual drank much of the whiskey and coke while sitting in his car prior to his return trip home. The individual was stopped by the police after he was observed making a sudden stop and nearly colliding with another vehicle. When questioned by the police, the individual falsely stated that he had not been drinking. The policemen administered a field breath alcohol test which indicated that the individual had a blood alcohol level (BAL) of .176/.166. The individual was charged with DUI. The charges were later reduced to Inattentive Driving and, as a result, the individual was not required to seek alcohol treatment by the court.

On May 11, 2004, the individual was also required by DOE Security to submit to a Personnel Security Interview (PSI) concerning the DUI arrest. During the PSI, the individual explained the circumstances of his April 2004 DUI, and his efforts to control

his drinking during the months preceding that arrest. The individual stated that he had consumed no alcohol since the day of his DUI arrest and that he did not intend to drink any more. The individual further stated that he had decided not to seek alcohol treatment because he believed that he could control his drinking.

Subsequent to the PSI, the individual was referred to the DOE Psychiatrist who reviewed the individual's security file, including the PSI transcript, and conducted a psychiatric interview of the individual on September 29, 2004. The DOE Psychiatrist also performed several psychological tests on the individual. The individual informed the DOE Psychiatrist that he had remained abstinent since the April 2004 DUI arrest. The DOE Psychiatrist nevertheless diagnosed the individual with Alcohol Abuse, based upon criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV*. In his report, the DOE Psychiatrist indicated that the individual could have a favorable prognosis if he remained abstinent and submitted to reasonable therapy, including six to ten counseling sessions and ten to twenty Alcoholics Anonymous (AA) meetings, and committed to attending his Employee Assistance Program (EAP). The DOE Psychiatrist further noted incidentally in his report that during their interview, the individual stated that he had used marijuana one time in his life.

The individual resumed drinking in January 2005, believing that he could handle an occasional beer. However, his drinking began to escalate and the individual was again arrested on a charge of DUI on February 20, 2005. In this instance, the individual claims that he had consumed several beers when he became concerned that his wife was late coming home, and he decided to drive to a local casino to look for her. The individual did not find his wife and was stopped on the return trip home by the police who observed the individual weaving in his lane. Upon being stopped, the arresting police officer observed that the individual had his three-year-old son sleeping in the back seat, and there was an half full bottle of beer sitting on the floor behind the driver's seat. The individual told the policeman that he had not been drinking. However, the breath alcohol test administered by the policeman indicated that the individual had a BAL of .16/.14. As a result of his February 2005 DUI, the individual's driver's license was revoked for one year and he was placed on supervised probation. The individual was also required to attend a six-hour alcohol education class.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory

information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Criteria F & K: Falsification and Illegal Drug Use

I will consider the security concerns raised under Criterion F and Criterion K together, since they both relate to a statement allegedly made by the individual to the DOE Psychiatrist. Referring to his psychiatric interview of the individual, the DOE Psychiatrist states in his report: "Other substances of abuse are essentially denied, though he admits using marijuana, but only one time in his life." DOE Exh. 8 at 3. This is the only information in the report concerning the individual's use of illegal drugs. However, this revelation raised a concern under Criterion F since, according to the Notification Letter, the individual denied using any illegal drugs in the five years preceding his submission of his Questionnaire for Sensitive Positions (QSP) dated June 18, 1989, and his QSP dated October 17, 1994.<sup>3/</sup>

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<sup>3/</sup> At the hearing, the Personnel Security Specialist testified that while the individual's QSP's covered specific time periods (i.e., the preceding five years), the individual also responded

Serious issues are raised with regard to the individual's honesty, reliability and trustworthiness to the extent he provided false information regarding his past drug use on his QSP's. As observed in similar cases, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,515 (1995); *Personnel Security Hearing*, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000). I therefore find that DOE Security properly invoked Criterion F.

I further find that Criterion K was rightly applied in this case. Illegal drug use raises a security concern for the DOE for it reflects a deliberate disregard for state and federal laws prohibiting such use. "The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is the further concern of the DOE that the drug abuser might also pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information." *Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,512 (1995); *see Personnel Security Hearing*, Case No. VSO-0283, 27 DOE ¶ 82,822 (1999).

However, I find that the individual has adequately mitigated the security concerns under Criteria F and K under the circumstances of this case. Despite the statement made in the DOE Psychiatrist's report, the individual was adamant at the hearing that he has never used illegal drugs. Tr. at 45. The individual believes that the DOE Psychiatrist must have misinterpreted his responses during the interview. According to the individual: "He asked me at least three or four different times, have you ever used any drugs? And I said no. Have you ever used marijuana? And I said no. He says, not even one time? And I said, no, I haven't. . . In my last statement, I said, not even like Clinton, referring that I had never even tried it and not inhaled, that's what I meant by it. The only thing I can figure is that he misinterpreted that." Tr. at 45-46.

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"no" to his use of illegal drugs on forms required by his employer which did not specify a time frame. *See* DOE Exh. 4. The individual's answers on these forms do not fall within the purview of Criterion F since they were not completed by the individual "in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization." 10 C.F.R. § 710.8(f). The Personnel Security Specialist testified that the individual's statements on his employer's forms may nevertheless raise a concern regarding the individual's honesty under Criterion L. Tr. at 33.

The DOE Psychiatrist did not testify at the hearing,<sup>4/</sup> and the Personnel Security Specialist testified that she has had no conversation with the DOE Psychiatrist about the statement in his report. Tr. at 23. Thus, the only information concerning the individual's one-time marijuana use presented in the record is the single statement itself, which does not specify when the purported marijuana use occurred. It is therefore unclear whether the individual's alleged marijuana use occurred within the five years preceding his 1989 or 1994 QSP's, even assuming the individual did actually admit a one-time use during his psychiatric interview. Under these circumstances, I find that the concerns of DOE Security under Criteria F and K are sufficiently mitigated.

B. Criterion J, Use of Alcohol

(1) Derogatory Information

The individual has admittedly had intermittent problems with alcohol since high school, when he was arrested twice for Illegal Consumption. *See* DOE Exh. 7 (PSI) at 24-30; DOE Exh. 8 at 3. In late 2003, the individual began a period of abstinence due to problems controlling his drinking and altercations with his wife. However, the individual began drinking again in early 2004, leading to his first DUI in April 2004 when he registered a BAL of .176/.166. *See* DOE Exh. 6. The individual began another period of abstinence following this DUI arrest, which the individual was able to sustain through September 2004, when he was evaluated by the DOE Psychiatrist. At that time, the DOE Psychiatrist diagnosed the individual with alcohol abuse. However, the individual resumed drinking in January 2005, and within two months the individual was again arrested on a second charge of DUI. On this occasion, in February 2005, the individual was driving with an open container of beer in the car, his three-year old child asleep in the back seat, and a registered BAL of .16/.14. *See* DOE Exh. 10. Following this second DUI, the court ordered the individual to undergo a diagnostic assessment and alcohol education by a treatment facility (Treatment Facility). In its Diagnostic Summary issued on July 14, 2005, the Treatment Facility also diagnosed the individual with alcohol abuse. *See* Ind. Exh. 2.

Thus, I find that DOE Security properly invoked Criterion J in suspending the individual's security clearance. The DOE Psychiatrist's diagnosis of alcohol abuse is corroborated by the diagnostic assessment of the Treatment Facility and the individual's admitted difficulties stemming from his use of alcohol. In other DOE security clearance proceedings, Hearing Officers have consistently found that a

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<sup>4/</sup> While the DOE Psychiatrist was not called to testify, the parties reached a stipulation concerning the alleged one-time marijuana use to "let the [DOE Psychiatrist's] report of that conversation stand as evidence." Tr. at 71.

diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). These concerns were explained at the hearing by the Personnel Security Specialist, who stated that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. Tr. at 16-17. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation and reformation to mitigate the security concerns of DOE Security.

## (2) Mitigating Evidence

The individual testified that after his first DUI arrest in April 2004, he still thought that he could control his drinking and he therefore did not seek treatment or counseling. Tr. at 37-38. The individual stated, however, that his second DUI arrest in February 2005 made him realize that he has problem and he has been abstinent since that time. *Id.* According to the individual, "When the last DUI occurred I realized that there was a problem, and I'm making steps towards staying abstinent and staying away from alcohol and doing what I can to meet all the requirements of the courts and any suggestions that the [Treatment Facility] has and attending the AA meetings and seeing how other people deal with alcohol use." Tr. at 47-48. The individual testified that he intends to continue in AA and remain abstinent, and plans to begin sessions with his EAP counselor. Tr. at 65.

The individual's beginning steps toward rehabilitation and reformation are commendable. However, I find that they fall far short of the requirements made by the DOE Psychiatrist who recommended in his report issued in October 2004, that the individual sustain abstinence, attend six to ten counseling sessions and ten to twenty Alcoholics Anonymous (AA) meeting, and commit to EAP counseling. DOE Exh. 8 at 7. This report was issued four months prior to the individual's second DUI arrest. It is fairly obvious that the DOE Psychiatrist would have imposed more stringent requirements for reformation and rehabilitation had he re-evaluated the individual following the second DUI, which came within one year of first DUI in April 2004.

Upon cross-examination at the hearing, the individual admitted that he did not seek counseling immediately after his February 2005 DUI arrest, but attended one six-hour alcohol education class in July 2005 only after being ordered by the court. Tr. at 56-57. The individual apparently began attending AA on his own volition. However, the individual further testified that he had attended only six AA meetings and he did not



yet have an AA sponsor. Tr. at 61. The individual has had no other treatment or counseling, and had only six months of sobriety at the time of the hearing. Tr. at 65-66. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol,<sup>5/</sup> and I cannot recommend restoring the individual's security clearance. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

### C. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's alcohol-related arrests and domestic problems stemming from his use of alcohol. As set forth above, I find that the individual has not sufficiently mitigated the security concerns associated with his use of alcohol. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

## III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(f), (k), (j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has mitigated the security concerns associated with his apparently providing false information on security documents, and with his alleged use of illegal drugs. However, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol and associated conduct. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual

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<sup>5/</sup> The *Adjudicative Guidelines* of 10 C.F.R. Part 710 state the following concerning mitigation of alcohol-related security concerns: "Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or similar organizations, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program." Guideline G, ¶ (d), *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, 10 C.F.R. Part 710, Subpart A, Appendix B. The individual in this case has not nearly met these standards.

may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: November 22, 2005